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the recognition and enforcement of foreign judgments, and arbitral awards.

Because transnational legal process often requires courts to consider, and at times apply, customary international law, some have charged that the process is inherently undemocratic. Koh quickly dispatches this claim, noting first that "federal courts have applied customary international law since the beginning of the Republic" (p. 253). Moreover, "unelected judges apply[ing] law that was made elsewhere . . . is a *description* of the traditional process of common law judging" (*id.*). Most importantly, the transnational legal process retains a fundamental "democratic check": "supervision, revision, and endorsement by the federal political branches" (p. 254).[1]

With its lucid and economic explanations, its rational organization and exposition, and its sophistication as to the important issues, Koh's *Transnational Litigation in United States Courts* is a major contribution to the field. It is an ideal text for student, practitioner, judge, and scholar alike. It offers a sophisticated survey of the landscape of transnational civil procedure in the United States. It also shows how this landscape evolved over the last century of globalization, with the justifications for any particular doctrine often shifting over time. This historical narrative is not merely of academic interest. The practitioner will find this history useful as she seeks to predict the course of law in order to guide clients or plead before courts. Koh helpfully identifies the trends in the law (for example, the "declining deference to foreign sovereignty" through jurisdictional immunity (p. 122)). Neither hornbook nor casebook, the text is instead an ordering (and reordering) of the subject. This book will likely prove to be a highly thumbed-through volume on the shelves of many international lawyers.

That this book is the work product of someone recently confirmed as the legal adviser in the U.S. Department of State—the nation's top international lawyer—bodes well for U.S. engagement with the world through law.

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[1] *See* Harold Hongju Koh, *Is International Law Really State Law?* 111 HARV. L. REV. 1824, 1855 (1998); Anupam Chander, *Globalization and Distrust*, 114 YALE L.J. 1193, 1227 (2005) (observing that polities retain the right to "review, revise, and reject" international law norms).

The Institutional Veil in Public International Law: International Organisations and the Law of Treaties. By Catherine Brölmann. Oxford, Portland OR: Hart Publishing, 2007. Pp. xvi, 313. Index. $95.00, £48.00.

In this book, Catherine Brölmann, a law professor at the University of Amsterdam, analyzes the "institutional veil" of international organizations and carefully explores the many intricacies of the meaning of an independent legal personality of an international organization. She uses the term "international organisation" to mean organizations established by intergovernmental agreements broadly construed and to exclude nongovernmental organizations. Her overall thesis is that, in contrast to the notionally impermeable sovereign veil of the state, the "veil" of international organizations is more "permeable," with the member states and component organs showing through in varying degrees. She notes that the degree of transparency of the institutional veil varies according to the legal context. Yet this flexibility "creates uncertainties about accountability at the various levels of decision-making authority" (p. 6).

Brölmann develops her thesis by describing an "oscillation" between an "open" and a "closed" image of the international organization (p. 4). She sees a dialectic relationship between the two images. In the open image, the states and the internal institutional order are visible and accessible. In the closed image, from an external perspective, the international organization is "one-dimensional" (p. 140). In the open image, the organization exists as a vehicle for states, and in the closed image, the organization operates as an independent actor. Furthermore, Brölmann employs the terms "transparent" (p. 32), "semi-closed" (p. 253), and "semi-open" (p. 254) to describe international organizations.

The dialectic occurs in the different ways that the international organization is treated in international law. In the law of treaties, which, she says,

is geared to equal subjects, international organizations will tend to be viewed as relatively closed, and the organization will be "flattened out" (pp. 258, 260). Yet, when the organization serves as a forum for states, the layered character of international organizations will be perceived as an open structure. When the constituent treaty of an organization is under review, the organization appears transparent—partly open and partly closed.

The book points out that both images—open and closed—coexist and that this "dual" image of the international organization "has not been fully acknowledged" (p. 1) and "does not seem to be part of the analytical tools used in the debate on the development of international law" (p. 271). Thus, Brölmann's project is designed to fill this "conceptual lacuna" (p. 6).

Brölmann writes clearly and draws from a wide range of material on international organizations; the book is well-documented and is usable as a treatise on international organizations despite its thin index. The author divides her book into three main parts: part one reviews the history of the conceptualization of international organizations as subjects of international law; part two examines the different ways that international organizations are involved in treaty practice and shows how the institutional veil changes depending on context; and part three analyzes the law of treaties of organizations by providing a detailed history of the negotiation of the 1986 Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations.[1]

Part one examines international organizations as legal actors. It pays special attention to the definition of an international organization and then explains key terms such as "autonomy," "independent will," "legal personality," "functionality," and "centralization" (pp. 17–29). The book explains that autonomy vis-à-vis the member states is based on the organization's institutional rules, whereas legal personality is accorded by general international law. The historical material is condensed into two chapters, one beginning in the late eighteenth century and the other commencing with the advent of the United Nations. The discussion of the League of Nations period is particularly well done.

Part two provides an overview of the involvement of international organizations in treaty-making. An initial chapter examines international organizations as a forum for treaty-making by states and compares distinctive practices across organizations including international technical agencies. In addition, the book examines the treaties made by international organizations with other parties and finds that this "treaty-practice is—from the perspective of general international law—perfectly comparable to that of states" (p. 131). In Brölmann's view, the law of treaties does not, and cannot, make a legal distinction between treaties on the basis of parties. Another chapter discusses the constitutive order of organizations. Brölmann says that "[f]rom the 1949 *Reparation* case[2] onwards, interpretation of an organisation's constituent treaty seems in fact marked by a continuous tension between law of treaties discourse and constitutional discourse" (p. 140).

Part three (the largest part of the book) provides an excursus on the 1986 Vienna Convention and its preparatory work in the International Law Commission. Brölmann explains why treaties of international organizations were left out of the 1969 Vienna Convention on the Law of Treaties and how that Convention came to be the template on which the 1986 Convention was based. She notes the innovative rules of the diplomatic drafting conference, which allowed nearly full-fledged participation by some international organizations making substantive and procedural proposals. These international organizations, however, could not vote. Although international organizations were permitted to ratify the Convention, these ratifications do not count toward enabling the Convention to go into force. Twenty-three years later, the 1986 Vienna Convention has still not gone into force. Brölmann suggests the "most likely cause" of this diplomatic failure was the "equal and

[1] Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations, Mar. 21, 1986, 25 ILM 543 (1986) (not in force).

[2] *See* Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949 ICJ REP. 174 (Apr. 11).

independent status of organisations" (p. 193). This reviewer wishes she had devoted more space to exploring that point.

One chapter in the book examines the 1986 Convention in detail and focuses on the controversial issues that "render the essence of the process of inclusion of organisations in the international law canon" (p. 7).[3] She devotes considerable attention to the debate on whether treaty obligations of international organizations also apply to member states, a matter that, in the end, the treaty drafters were unable to resolve. In Brölmann's view, her thesis as to the transparent, layered aspect of international organizations is "confirmed"[4] by the entire drafting history (pp. 252, 260). The drafters' inability to establish a norm reflected the straitjacket of the law of treaties, which, she says, looks for one-dimensional, equal treaty parties. "A genuine link between the law of treaties and the institutional law of organisations, with reciprocal normative effect, does not seem possible" (p. 260).

In the book's concluding remarks, Brölmann makes explicit the corner into which international law has been painted by jurists and publicists. Although international organizations are "dynamic and layered legal creatures," their nature "does not have full play in positive international law" (p. 271). This result occurs because "[t]reaty-making subjects are unitary, one-dimensional legal actors or they are not subjects at all" (*id.*). Thus, "in those respects where international law cannot accommodate the transparency of international organisations, it also lacks the ability to accommodate developments of multilevel governance and the involvement of non-state actors in the international community at large" (*id.*). She suggests that the formal legal framework will ultimately need to be reconstituted.

From this reviewer's perspective, such a reconstitution should begin by rethinking the assumption in the law of treaties of "legal equality of actors" (p. 3) and "equality of subjects" of international law (p. 263). Because of this assumption in the law of treaties, Brölmann explains that "a substantive distinction between states and organisations cannot be made" (p. 260). Yet clearly, many important distinctions exist and need to be made. Brölmann takes note of David Bederman's "more flexible outlook" on the nature of international organizations wherein he seeks to revive an antecedent vision of international institutions as "communities" (p. 72).[5] Brölmann does not pursue Bederman's thesis, but his open view of international organizations, in my opinion,[6] offers the best approach for positioning international organizations within international law.

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The Reasons Requirement in International Investment Arbitration: Critical Case Studies. Edited by Guillermo Aguilar Alvarez and W. Michael Reisman. Leiden: Martinus Nijhoff Publishers, 2008. Pp. v, 373. Index. $221, €157.

In the world of international arbitration, much is often at stake, and if one ends up on the losing side, one wants (!) to know the reasons why. Consequently, it is generally accepted that the private judges tasked with deciding these international legal disputes will provide written reasons purporting not just to announce, but to explain and justify, the result they have reached.

Even in ancient Greece, international arbitral awards "often contained the reasoning upon which" they were based, sometimes in great detail and sometimes including summaries of the underlying procedures.[1] In more modern times, arbitral statutes or institutional rules generally impose

[3] A lengthy footnote (p. 198 n.9) provides a bibliography on the 1986 Convention. In addition, the book contains three annexes comparing the two Vienna Conventions.

[4] The use of the word "confirmed" is odd because the author must have been aware of the 1986 Convention drafting history before formulating a thesis in 2007.

[5] See David J. Bederman, *The Souls of International Organizations: Legal Personality and the Lighthouse at Cape Spartel*, 36 VA. J. INT'L L. 275 (1996). In this article, Bederman discusses community versus personality. *Id.* at 371–73.

[6] See Steve Charnovitz, *The Relevance of Non-State Actors to International Law*, *in* DEVELOPMENTS OF INTERNATIONAL LAW IN TREATY MAKING 543, 544–48 (Rüdiger Wolfrum & Volker Röben eds., 2005).

[1] JACKSON H. RALSTON, INTERNATIONAL ARBITRATION FROM ATHENS TO LOCARNO 165 (1929).